will be started and we will complete the works. Thank you.

SHRIMATI RENUKA CHOWDHURY: Madam, we welcome this.

THE DEPUTY CHAIRMAN: Thank you, Mr. Prime Minister. The world will get the message that Kashmir and Kashmiri people are in the minds of everybody and everybody is taking it seriously. This House also took it seriously, that we stopped our normal business and discussed this matter. That itself is something we never do generally. We are sticklers for rules in this House. And the Members cooperated. The Leader of Opposition and everybody cooperated. I thank them for this cooperation.

Now, we go back to our normal business. There would be two things. The Finance Minister will reply and you will speak, Mr. Agarwal. It is already five.

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE DEPOSITORIES (THIRD) ORDINANCE, 1996 (NO. 28 OF 1996)

II THE DEPOSITORIES BILL, 1996—Contd.

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM): I will take only a few minutes, Madam.

At what time does this House adjourn?

THE DEPUTY CHAIRMAN: 6 O'clock. The mover will reply

AN HON. MEMBER: He has withdrawn the motion.

SHRI SATISH AGARWAL: No, I have to withdraw. I have not yet withdrawn. it has to be formalised.

THE DEPUTY CHAIRMAN: So, Mr. Chidambaram, let me ask him to withdraw it so that you have lesser problems. The mover of the resolution will have to speak. First let him withdraw or reply or say whatever he has to say.

SHRI SATISH AGARWAL: Madam the speed with which the Finance Minister responded to my objection with regard to registration of foreign banks and foreign companies, I immediately responded that I withdraw my resolution. But I am making a formal request now

In view of the assurance given by the hon. Finance Minister in the earlier hours, I seek the leave of this House to withdraw my resolution seeking disapproval of the Depositories (Third) ordinance, 1996.

The statutory resolution was, by leave, withdrawn.

THE DEPUTY CHAIRMAN: Now, there is only one speech. So, we should finish it before 6 O'clock.

SHRI P. CHIDAMBARAM: Madam, I am deeply grateful to the hon. members for extending support to this Bill. (*Interruptions*).

THE DEPUTY CHAIRMAN: Sikander Bakht Saheb, floor-crossing is allowed in this House, sometimes. (*Interruptions*) You have crossed two-thirds of the floor, so you better be careful. (*Interruptions*).

Let the Finance Minister reply.

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM): I am deeply grateful to the hon. Members for extending support to this bill. This Bill became law when an Ordinance was made on the 20th of September, 1995. I do not like ordinances. I certainly do not like re-promulgating ordinances. But then, this is a peculiar situation because the original Ordinance amended a large number of Acts and the amendments came into force. Therefore, when this Bill could not be passed in the Rajya Sabha earlier, if we had not re-promulgated the ordinance, those amendments would have lapsed. And under the law, today the original provisions don't revive. So we would have had a complete deadlock and, therefore, we had to re-promulgate the ordinance. In fact, when we

decided to re-promulgate the ordinance on the 21st June, we went through some anxious moments. once we confirmed the provisions of the law that re-promulgation is inevitable, then we had to re-promulgate the ordinance. That is how this ordinance was re-promulgated on 21st June. this is because of the elections and the House could not take up this Bill. There is no other reason for re-promulgating the Ordinance.

I know that this is a framework Bill. Criticism has been levelled that I am leaving too much to regulations. but in a matter like this, I am afraid, there is no option but to leave it to regulations. this Bill provides a framework of the law to govern the depositories. We have given the power to regulate the depositories to SEBI which is governed by another statute made by parliament. Now the SEBI has to make regulations. These regulations will be placed before this Hosue under section 27 of the Bill and this House would have the right to modify these regulations. As I said, SEBI has notified some regulatiosn on 16th May, 1996 and after the debate in lok Sabha and after the debate here I would advise SEBI to take a second look at these regulations—I myself would look at these regulations— I am not happy with one or two regulations. These regulation will be finally notified and then will be placed before this House and this House can take a look at those regulations. Then someone pointed out that without the regulations the Bill is incomplete. it is a catch-22 situation. unless the Bill is made into a law, I cannot make the regulations and come here. I think we should make the law...

SHRI SATISH AGARWAL: You could have made the regulation because the Ordinance is as good as an Act.

SHRI P. CHIDAMBARAM: I agree that the Ordinance is as good, but when the Bill is pending and the Ordinance has not become the law, how do I place those regulations? If the Bill is rejected, those regulations will lapse then. First the bill has to become the law, then the regulations will be placed and then this House would have the full authority to modify those regulations. In the meanwhile, I will also look at those regulations and will come before this house with regulations which take care of all the apprehensions mentioned by the hon. Members.

A question was asked about what are securities. Securities are defined in regulation 28. They include only shares. The definition is large enough to include not shares, scrips, stocks, bonds, debentures, debenture stocks and other marketable securities. I think that regulation is quite adequate.

A question was asked about the power to pledge one's beneficial interests. Regulation 58 takes care of it. A detailed procedure has been laid down by which the beneficial owner will give an intimation to the participants and the participants will notify the depository and the depository is to convey its decision as soon as possible. I have already told Lok Sabha that I will ask the SEBI to ensure that as soon as possible should be replaced by a specific time-limit so that the beneficial owner is not affected by any delay in granting the permission.

Rights and obligations of the depositories are governed by regulation 26 read with section 17(1). A long list of rights and obligations is mentioned in the regulation and when the regulation comes you can take a look at that. now, someone mentioned about the provision to impose a fine and said that there should always be mandatory imprisonment and fine. I don't subscribe to that kind of penal jurisprudence. I don't think that mandatory sentence is the right kind of penal jurisprudence. Modern penology does not prescribe mandatory imprisonment for all offences. Sentencing must be proportionate to the crime committed and sentencing is a judicial function. The law-maker, i.e. the parliament of India, must make a law, leaving it to the judiciary the right to impose one or both sentences.

What sentence should be imposed in the given case is not for parliament. So, it should be left to the judiciary. I think, the law as provided, is in conformity with the modern principles of penal jurisprudence.

Questions were asked about the audit by the CAG. I do not think that is correct either. Please remember the despository is a company, it is not a Government company, it is any company, a private company, which is providing a service which the capital market requires. Like the stock broker provides a service, like the exchange provides a service, like a chartered accountant provides a service and he depository provides a service. What is the service? It facilitates free transferability. It makes securities fungible. That service is not being provided by the Government. That service is being provided by a depository which is a company under a law made by Parliament. That company is subject to the Companies Act. it is subject to other provisions of the Companies Act. If in a special case a company has to undergo a special audit, there is a procedure in the Companies Act for a special audit. I do not think the CAG, who is virtually the Government's auditor, should step in to start auditing companies.

There was some debate about the threshold, whether one hundred crores is too high or too low. I am afraid you can have two views on that. Some people think that one hundred crores is too high, some Members think that one hundred crores is too low. I think one hundred crores is adequate. We have got only one depository registered so far. I correct myself; earlier I said, maybe, there are other applications, but I have just verified that there is no other application. Therefore, it is possible that some people think that one hundred crores is so high and, therefore, there is no application. it is quite possible that since the Bill has had a chequered career people are waiting for this Bill to become a law before they make an application. So, I think we should make a law, let us see whether there are other applications. I am quite sure that other companies will make applications; maybe Indian banks make applications, maybe, BSE makes application—let us see. if we find that the threshold is too high, we can always modify it. I think there will be in course of time at least two or three depositories. I do not envisage a situation where there will be twenty depositories. Equally I do not envisage a situation where there will be only one depository. I think in order to provide adequate competition and to maintain the quality of service, there will be, there shold be, at least two or three depositories serving the country.

Mr. Mitra, of course, took us into rather wide ranging areas. We will have an occasion to debate those areas later. I do not think they arise out of the Bill. This Bill is a framework law and since all of you are broadly supporting this Bill, I request you to pass this Bill. I will come back to this House with regulations. The rules have not been framed and when the Government frames them, they have to be placed before the House. When the SEBI frames the regulations, they have to be placed before the House. The bye-laws are governed by a separate section. The bye-laws are to be framed by the depositories with the approval of SEBI. So, bye-laws cannot be framed according to whims and fancies. SEBI will get the by-laws and before it grants approval, it will take care to ensure that the bye-laws conform to the Act, to the rules and to the regulations. Let us give a chance to the working of this law. I will come back. My approach to reform in these areas is to make reforms; if you find difficulty, come back and correct your course. you can always make mid course corrections. I cannot predict what will happen. But I certainly will not abdicate my responsibility in administering this law properly. I request hon. Members to cooperate and pass this Bill.

SHRI RAGHAVJI: Madam, I seek one clarification. Will you make it man-

datory for the promotor companies to join and route through depositories?

SHRI P. CHIDAMBARAM: No. The option today is given to the shareholders. If I mandatorily require companies to have their shares routed through depositories, I am taking away the option of the shareholders for holding the securities in the physical form. We cannot by legislation change the behaviour of people. We must provide an alternative. In due course, like it has happened in every other country, more and more shareholders would opt to hold their securities in a dematerialised form. We cannot today say that all of you shall hold the securities of a company in a dematerialised form. That would be bad. We should allow them the option. To begin with only some people will hold it in depositories. But in due course I am confident more and more shareholders will hold it in dematerialised form.

SHRI SATISH AGARWAL: Madam, I have only one clarification.

In section 22, it says,

> "No court shall take cognizance of any offence punishable under this Act or any regulations or bye-laws made thereunder, save on a complaint made by the Board."

So if there is a violation of any provision of this ordinance or Bill then the shareholder, the investor or any other person should be free to file a complaint. Why only on the complaint of the Board? Board means SEBI.

SHRI P. CHIDAMARAM: Today under company law also most of the offences have to be lodged through the Registrar of complaints. Today SEBI is a regulatory body. SEBI has powers ti inspect, to correct. If SEBI fails to redress the grievance, then SEBI will lodge the complaint before the court. Otherwise, we cannot have SEBI as a regulatory body and the court stepping in even before the regulatory body tries to redress the grievance. If you are not interposing SEBI then I can understand, even a shareholder should lodge a complaint straightaway. SEBI is a regulatory body. SEBI has been given the powers of regulation. SEBI has been given powers to redress the grievance.

SHRI SATISH AGARWAL: If SEBI itself is guilty of some violation of the provisions of law, why should SEBI file a complaint in the court?

SHRI P. CHIDAMBARAM: This Bill does does not contemplate an offence by SEBI, kindly see the section. This Bill contemplates violation by the depository. SEBI is a regulatory body. The complainant must first go to SEBI and say, "My right has been violated by the depository or by the participant." SEBI in exercising the regulatory powers will try to redress the grievance. But if SEBI finds that there is a criminal offence committed, SEBI will lodge the complaint. This Bill does not deal with the complaint against SEBI. Complaints against SEBI will be governed by the SEBI Act. (Interruptions)

SHRI SATISH AGARWAL: Where will the cimplaint be filed?

Which court will have jurisdiction?

THE DEPUTY CHAIRMAN: Let one point be put at a time.

SHRI SATISH AGARWAL: Madam, investors are spread all over the country. They are the shareholders. They go to the depository, they make a complaints to the SEBI; somebody is in the South, somebody is in the North, somebody is in the East, Someboday is in the West. They file a complanit with the SEBI. which court will take cognizance and what is the guarantee that SEBI will take effective steps to file a complaint?

SHRI P. CHIDAMBARAM: The company Law Board and the Registrar of companies are all statutory bodies bound to protect the interest of the investor SEBI's charter is to protect the investor. We can go through the SEBI Act. SEBI

is governed by a separate Act, the securities Exchange Contract Act.

THE DEPTUY CHAIRMAN: He is clarifying that SEBI is governed by another Act. If SEBI has violated something, that Act is already there. (Interruptions)

SHRI VAYALAR RAVI: Madam, about the same thing I want to ask to Minister. My question is very simple. Whose interest is this Bill meant to protect?

Is it to protect the interest of the investor? Just look at Section 5, penalty 20. It is very clear. I want to make two points on this including 22 because 20 goes with 22. Then, 22 is preventing an investor who was deferauded or cheated from going to court directly, especially when we have judicial activism today. Here you are preventing the investor; he has to pass through a series of procedures, he has to go to the Secretariat and then go to SEBI. You know how SEBI is functioning. It is an executive body, it is not a judicial body. The fate of the investor depends upon the whims and fancies of the executive body. So, Madam, here in Section 20, the Minister said we cannot make a law which will make ti mandatory or compulsory imprisonment. But the hon. Minister knows that if there is a default in provident fund payment, imprisonment is compulsory.

The defaulter has to go to jail, If he defaults, he would be prosecuted; he would land himself in jail. This is a deterrent punishment. Therefore, nobody wants to violate the law. They would remit the money. Here, there are two points. One is, the interests of the investors have to be protected. This is important, especially in the wake of the securities scam and other things. My question is; why can't you make it a mandatory? The depository is a limited institution, a very limited institution. So far only one application has come. My question is: why can't you make it a mandatory or a compulsory imprisonment? Secondly, why do you limit it to the Board? Why can't the investor be allowed to make the complaint to the court? Why do you prevent the investor, who is defrauded, from going to the court? This is my qeustion.

SHRI SATISH AGARWAL: That is question.

SHRI SURINDER KUMAR SINGLA: Madam, just one question. I had expressed by Apprehension which the hon. Minister has not addressed. I believe, SEBI is a statutory body. Now, in regard to any order of the SEBI, the appeal is lying only with the Central Government. Do you think it is right in the eyes of the law? An order of a statutory body should be appealed against in a court of law rather than the appeal lying only with the Central Government. The question is: how far it is bad in terms of the law? Is it really good that an appeal against the order should be filed only with the Central Government rather than in a court of law?

SHRI R.K. KUMAR: Mr. Minister, I referred to section 9 (2). In section 9(2), section 372 of the Companies Act has been excluded.

SHRI P. CHIDAMBARAM: I have taken note of it.

SHRI R.K. KUMAR: Kindly examine it. A company cannot say:

"I am not holding the share; it is with the depository and, therefore, section 372 of the Companies Act, 1956 is not applicable to me".

SHRI P. CHIDAMBARAM: I will answer Mr. Kumar's question later. Now, in regard to the questions raised by Mr. Agarwal, Mr. Singla and Mr. Ravi, I see SEBI as a regulatory body. It is governed by a statute. It performs administrative functions. It perfomrs quasijudicial functions. It has the power to take remedial action. If you read the SEBI Act together with this Act, you would find that SEBI is clothed with a lot of powers, just like the Company Law Board has got powers,

or, the Registrar of Companies has got powers. These powers are conferred by Parliament on these bodies in order to protect the interests of the shareholders and to prevent other persons from violating the law.

Now, when there is a violation of law, what happens? Take the case of a depository violating the law. For example, I seek permission to pledge, but the depository, arbitrarily, refuses to give me permission. Or, I make a payment, but the depository, arbitrarily, refuses to deliver against payment and record my name. These are violations committed by a depository. Normally, in such a case, the complainant should go to one forum. That forum is the SEBI. Being a regulatory body, the complainant goes to the SEBI and says: 'Please redress my grievance'. The Act and the regulations provided for SEBI redressing that grievance by directing the depository to do a particular thing or undo something else. When the depository refuses to do a thing or undo the error or the omission or the commission and if it persists with that offence which is punishable under the law, SEBI would become the complainant on behalf of the investor and the complaint is lodged in the name of SEBI. I think this is, perfectly, the right course to take. Madam, there are parallel sections. I do not have the Act with me. In the Companies Act, there are parallel sections enabling the Registrar of Companies to be the complainant before a court. There are similar sections in the Companies Act. I do not think there is anything wrong in the complainant being asked to go to the SEBI first and if the SEBI could not redress the grievance, prosecution being launched in a court of law on behalf of the SEBI. (Interruptions)

SHRI VAYALAR RAVI: Why should he go to the Central Government?

Why should he take recourse to section 23? Why is he prevented from going to the court?

SHRI P. CHIDAMBARAM: Kindly read the law in the manner in which it is written. Section 23 has nothing to do with prosecution.

THE DEPUTY CHAIRMAN: It is a problem of lawyers in this House.

SHRI P. CHIDAMBARAM: Section 23 has nothing to do with prosecution. Any order made by the SEBI, any administrative order made by the SEBI, is appealable to the Central Government. Section 22 deals with congnizance of offences. Section 22 deals with prosectuion. But section 23 is in respect of orders passed by the SEBI which are appealable to the Central Government.

That will then go with jurisdiction under Article 226. They are entirely different provisions.

Mr. Kumar raised a valied point. I think he has a point. There may be an error in drafting, but I am not going to pronunce on that now. I would consult the Ministry of law. But to my mind it apears that the language of the section should have been slightly different. The intention is not to keep shares beyond the control of section 372. But, I cannot assure this now. I am glad that he has brought it to my notice. It appears to me that the intention was not that the share should be beyond section 382; depositories should be beyond section 372. I will verify it. If necessary, we can make a minor amendment later on. But for the moment, since it is important that the depositories, which have been registered, should being to function. I would request that this Bill should be passed and, if need be, I would come back to the House with an amendment.

THE DEPUTY CHAIRMAN: Now that Mr. Agarwal has withdrawn his Resolution, I will put the Motion to vote. The question is:

> "That the Bill to provide for regulation of depositories in securities and for matters connected there-

with or incidental thereto, as passed by Lok Sabha, be taken into consideration."

The Motion was adopted.

THE DEPUTY CHAIRMAN: We shall not take up clause-by-clause consideration of the Bill.

Clauses 2 to 11 were added to the Bill.

Clause 12

THE DEPUTY CHAIRMAN: There is one amendment by Shri Ashok Mitra. Mr. Ashok Mitra, are withdrawing your amendment?

SHRI ASHOK MITRA: I am not moving it.

THE DEPUTY CHAIRMAN: If you are not moving any of your amendments, I do not have to ask you again and again.

SHRI ASHOK MITRA: Since I have already Known the mind of the hon. Minister, I will debate on it a on a later occasion. For the present let the Billl be passed. I am not going to move any of my amendment on this.

THE DEPUTY CHAIRMAN: So, All the amendments in the name of Shri Ashok, Mitra stand as not being moved. He has withdrawn all his amendments.

Clauses 12 to 31 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI P. CHIDAMABRAM: Madam, I beg to move;

"That the Bill be passed."

The question was put and the motion was adopted.

6.00 P.M.

THE DEPUTY CHAIRMAN: I must say that this Bill had been passed in the alloted time of three hours in spite of the other business in between.

SHRI V. NARAYANASAMY: Madam, what about clarifications on the statement by the Home Minister?

THE DEPUTY CHAIRMAN: The Home Minister had sent a letter saying that there is some conference of the DIGs going on where the Prime Minister is also going to speak. So, he is busy with the conference. He has a duty over there. So, he has expressed his inability to be present in this House today though it had been listed in today's List of Business.

SHRI V. NARAYANASAMY: Madam, every Minister is sending a letter like this. The other day, the Prime Minister had sent a letter. On some other day another Minister had sent a letter. It is going on like this.

THE DEPUTY CHAIRMAN: All of them are very busy.

SHRI MD. SALIM: It is a busy government.

SHRI SURINDER KUMAR SINGLA: It is a Letter-writing Government.

SHRI V. NARAYANASAMY: If they avoid the Parliament, they can go elsewhere.

SHRI VAYALAR RAVI: Madam, the sentence of Shri Md. Salim must go on record.....(Interruptions)....His sentence should go on record.

THE DEPUTY CHAIRMAN: Now it is past 6 o'clock. We have other business. We have the Railway Budget and another Bill. If the House doesn't want to sit beyond 6 o'clock, we can adjourn the House and start the debate on the Railway Budget and the other Bill tomorrow.

SOME HON. MEMBERS: Yes....(Interruptions)...

THE DEPUTY CHAIRMAN: Now, Mr. Salim, you are a part of the Chair. So, stop distrubing the House.

.....(Interruptions)....

SHRI MD. SALIM: In the BAC leaders of various political parties took a decision that we would sit up to 7 o'clock.

THE DEPUTY CHAIRMAN: The decision was not sit up to 7 0' clock. The

decision was to sit up to 6 0'clock, and beyond, if necessary.

SHRI MD. SALIM: Madam, the sense of the House is to adjourn. You can do so.

SHRI SATISH AGARWAL: Today it is not necessary to sit beyond 6 oclock.

THE DEPUTY CHAIRMAN: I must inform Members that we have got the Railway Budget and the Salaries and Pensions of Judges Bill. I think we would take up these things tomorrow afresh. Today, we have transacted a good a good amount of business. Hope that tomorrow also we would transact a good amount of business. On that note, let me adjourn the House.

SHRI SATISH AGARWAL: Just one second. At about noon, I was informed that the Salaries and Pensions of Judges Bill was going to be included in a supplementary list of business and that it was going to be circulated.

THE DEPUTY CHAIRMAN: That had been sorted out.

SHRI SATISH AGARWAL: I am only drawing your attention to the fact that this sort of practice by the Government, howsoever new they may be, is not desirable. We did not bring our papers. If you had ordered the issuance of the supplementary list of business, then, there would have been a problem. So, please take care of this aspect.

THE DEPUTY CHAIRMAN: We have taken care of this aspect. Mr. Sikander Bakht came to my Chamber and we discussed the business. Everything is in porper order. Certain technical requirements were necessary for the Bill yesterday. So, we could not list it in today's morning order paper. When we got over those technicalities, we thought that a supplementary business was to be brought in. But Mr. Sikander Bakht came to me and requested me that Members who want to speak on this subject were not present and that this subject may be taken up tomorrow. So, we respected his views, and it would be taken up tomorrow. Are you satisfied?

Now, I am adjourning the House till 11.00 A.M. tomorrow.

The House then adjourned at four minutes past six of the clock till eleven of the clock on Wendesday, the 24th July, 1996.

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